IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.777 OF 2005

M/s.Ashoka Constructions Company Appellant
vs.
Rathi Re-Rolling Mills Respondent

Mr.R.S.Apte with Mr.A.A.Garge for the appellant.

Mrs.M.M.Kochar i/b.M/s.Ram & Co. for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 17th July, 2007

P.C.

The following is the question of law:

. In view of Section 34 of Civil Procedure Code (CPC) and also the provision of Interest Act, 1978, whether grant of 18% interest from the date of amount due in the commercial transaction is illegal or bad in law? If no, whether Appellate Court was right in holding that in the absence of contract regarding rate of interest, the interest awarded at 18% p.a. is not sustainable?

2. The appellant is the original plaintiff. In a suit for recovery of dues with interest, as per order of

appellate court whereby the interest at the rate of 18% p.a. from 1.4.1986 till realisation of the decretal amount as decreed by the lower court dated 28.4.1997 on the amount of Rs.52,000/- has been set aside and the interest at the rate of 12% has been awarded from the date of the suit.

3. There is no dispute that based on the commercial transaction for recovery of the dues, the suit was filed. The trial court having once arrived at a particular conclusion and granted Rs.52,000/- to the plaintiff with interest at the rate of 18% from 1.4.1986 is within the frame work of law. It could not have been disturbed as there was no illegality in passing such judgement and decree.

4. However, the appellate court interfered with the discretion exercised by the trial Court and restricted the rate of interest at the rate of 12% i.e. from the date of the suit till realisation in such a commercial suit in the facts and circumstances of the case, cannot be said to be just and reasonable.

5. The suit for recovery of dues in a commercial transaction means the amount not paid though ought to

have been paid by the defendants. The date of demand and the due date in such suit are relevant. The trial Court was right by granting the decree at the rate of 18% from 11.4.1986 till realisation. There is no case to interfere with the judgement and order passed by the trial court.

6. The reliance placed by the learned counsel for the respondent in **M/s.Grindlays Bank p.l.c. v. Centre for Development of Instructional Technology & anr., AIR 1997 Delhi 164** is of no assistance. That was a case of unjust, enrichment based on Section 17 of the Contract Act. The Court did not grant interest rate at 17.1/2% p.a. on the principle of customs usage and trade practices as the plaintiff failed to adduce any evidence to that effect. In the present case, the demand notice was sent and the interest was claimed at 24% p.a. from the due date of the amount. In the same case, after considering Section 34 of the CPC, the Court has granted the rate of interest at 12% p.a. from the date of institution of suit till realisation holding it to be the commercial activity. In the present case, the money was due and recoverable from 11.4.1986. as on that day the deposit of Rs.52,000/- was wrongly and unauthorisedly transferred to the

account of the defendant/respondent. The grant of decree along with interest though claimed at the rate of 24%, but restricted to 18% by the trial Court, therefore, cannot be said to be unjust or contrary to law. It is permissible and, therefore, the discretion as exercised by the trial Court ought not to have been reversed by the appellate Court. The appellate Court has applied wrongly the ratio of judgements even of Supreme Court.

7. This is not the suit for damages. The grant of 12% interest from the date of the filing of the suit, int the facts and circumstances, even based on **Mahavir Prasad Rungta. v. Durga Datta, AIR 1961 SC 990** is not correct. That was a suit for recovery of damages which was held to be not claimable. After assessing the damages, the court normally grant interest from the date of assessment and not prior to or from the date of claim. But in a commercial suit the important date is the date of money due and/or the date of demand notice. The appellate court therefore erred in law by reversing the order passed by the trial court. The issue is answered accordingly.

8. Resultantly, the impugned judgement and order dated

31.7.2004 passed by the Additional District Judge, Nasik is set aside. The judgement and order dated 28.4.1997 passed by the IInd Joint Civil Judge, S.D. Nasik is restored. The Second Appeal is allowed in the above terms with no order as to costs.

[ANOOP V. MOHTA, J.]